

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,
Defendants.

_____ /

**RECEIVER'S MOTION TO APPROVE
RETENTION OF CANADIAN COUNSEL**

COMES NOW, Jonathan E. Perlman, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities,¹ by and through undersigned counsel hereby files this Motion to Approve Retention of Canadian Counsel ("Motion") and in support thereof states as follows:

1. On May 11, 2020, the Securities and Exchange Commission ("SEC") filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp. ("FMGC"), TCA Global Credit Fund GP, LTD. ("GP"), ("Receivership Defendants"), and TCA Global Credit Fund, LP ("Feeder LP"), TCA Global Credit Fund, LTD. ("Feeder Ltd."), and TCA Global Credit Master Fund, LP ("Master Fund") ("Relief Defendants") (collectively, "Defendants"). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3].

3. On the same day, the Court granted the motion and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista, P.A. ("GJB"), as permanent Receiver over the

¹ All terms not specifically defined herein have the meaning ascribed to them in the SEC's Motion for Appointment of Receiver [ECF No. 3] and the Court's Appointment Order [ECF No. 5], and the Court's First Expansion Order [ECF No. 16].

Receivership Entities [ECF No. 5] (“Appointment Order”).

4. Pursuant to the Appointment Order, the Receiver is empowered to, among other things, “engage and employ persons in Receiver’s discretion to assist Receiver in carrying out Receiver’s duties and responsibilities...” *Id.* at § II ¶ 5.F. Specifically, the Receiver may solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out his duties under the Appointment Order. *Id.* at § XIV ¶¶ 52–53.

5. At the commencement of the Receivership there were several active proceedings before courts in Alberta, Canada which involved Master Fund. At that time, TCA’s interests were being represented by Burnet, Duckworth & Palmer, LLP (“BDP”).

6. Acting under the express authority of the Appointment Order, the Receiver has been in communication with BDP and believes that it is in the best interests of the Receivership Estate to continue with BDP’s representation of Master Fund and advance the interests of the Estate in the Canadian courts through the conclusion of these matters.

7. After weeks of negotiation, BDP and the Receiver have agreed to an overall discount on BDP’s hourly rates of 26.5% and a \$5,000 retainer. A copy of the proposed engagement letter is attached as Exhibit A.

8. In the Receiver’s best judgment, BDP is highly experienced in their respective fields and would best be able to assist the Receiver in carrying out his duties in respect of the Canadian proceedings.

9. Accordingly, the Receiver seeks confirmation of approval to enter into the attached engagement and retain Barry Crump of the law firm Burnet Duckworth & Palmer, LLP.

WHEREFORE, Receiver, Jonathan E. Perlman, by and through his undersigned counsel respectfully requests that this Honorable Court grant the Motion and approve the Receiver’s

solicited professionals for engagement on this matter. A proposed order for the Court's consideration is attached as Exhibit B.

S.D. Fla. L.R. 7.1(A)(3) CERTIFICATE OF CONFERENCE

I, Irina Sadovnic, Esq., hereby certify that counsel for the Receiver conferred with counsel for the SEC on January 14, 2021, via phone regarding the requested relief and they authorized the Receiver to represent that the SEC does not oppose the relief sought.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq., FBN 124502
Isadovnic@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 25th day of January, 2021.

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq.

**Burnet,
Duckworth
& Palmer LLP**
Law Firm

Reply to: Barry R. Crump
Direct Phone: (403) 260-0352
Direct Fax: (403) 260-0332
brc@bdplaw.com

Assistant: Swaleha Ahmad
Direct Phone: (403) 267-1620
Our File: 74343-1

Via Email

January 15, 2021

Genovese, Joblove & Battista, P. A.
100 S.E. Second Street, 44th Floor
Miami, FL 33131

Attention: Jonathan E. Perlman, Esq.

Dear Mr. Pearlman:

Re: Retainer Letter - Terms of Engagement

Thank you for the instructions on behalf of the Receiver (defined below). This letter and attached Appendix styled General Terms and Conditions of Engagement set out the terms for us to continue to provide legal services to the Receiver (collectively, the **Terms**).

Acknowledgment of Terms

If the Terms are acceptable, please complete the acknowledgment at the end of this letter and return the signed copy of this letter to us. Please call me, if you have any questions.

Scope of Engagement

You have retained us to represent you in Alberta, Canada, in your capacity as Receiver (**Receiver**) of TCA Fund Management Group Corp., TCA Global Credit Fund GP, Ltd., TCA Global Credit Master Fund, LP and other related TCA entities (collectively **TCA**) appointed pursuant to the May 11, 2020 Order of the United States District Court, Southern District of Florida, Case No. 20-CIV-21964-CMA including, without limitation, representing the Receiver's interests in any current or future lawsuit by or against TCA and related entities in Alberta, Canada.

If you ask us to take on additional matters or the engagement expands, the Terms will govern the new matters, unless we agree otherwise in writing.

Fees

Our fees are generally based on the time spent, multiplied by the hourly rate of the lawyers and professional staff involved. But that is only a benchmark, and we may depart from that method where in our view it is appropriate. Our hourly rates for lawyers and staff vary. When reasonable to minimize costs, I may refer research and other work to more junior lawyers, articling students, or paralegals. My hourly rate for this engagement on the Receiver's behalf will be US \$550, effective February 1, 2021, representing a ~~25%~~ 26.5% discount from my normal hourly rate. The rates of others assisting me will be lower and subject to the same ~~25%~~ 26.5% discount from their usual firm rate. The discounted hourly rates of associates who may be assisting will be in the US \$200 - \$300 range

10625392.5

BD&P

2400, 525-8th Avenue SW, Calgary, Alberta, Canada T2P 1G1 Phone: 403-260-0100 Fax: 403-260-0332 www.bdplaw.com
Frank L. Burnet Q.C. (1980-1982) | Thomas J. Duckworth Q.C. (1925-2007) | James S. Palmer C.M., A.O.E., Q.C., U.D. (1928-2013)
The Hon. W. Kenneth Moore C.M., Q.C., U.D., Counsel (1925-2018)

26.5% DEF BLC

BURNET, DUCKWORTH & PALMER LLP

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and in the US \$100 - \$130 range for paralegals. Our hourly rates will change periodically, usually yearly, and the Receiver will be notified and asked to acknowledge any hourly rate changes.

We may adjust the time charges, taking into account such factors as the legal complexity, the monetary value and the overall significance of the matter, the degree of skill necessary, and the results achieved. In addition, we may consider special circumstances, such as urgency, special demands, financial circumstances, and value. We would do that to provide you with the best service at a reasonable cost. We would be happy to discuss any of our fees with you. *Burnet, Duckworth & Palmer understand and agree to comply with the SEC's billing guidelines and to a 20% holdback on all fees.*

Invoices

monthly BDC
Unless otherwise agreed, we will send you interim invoices for our fees, plus GST (if applicable) and disbursements (our out-of-pocket expenses), as set out in the attached Terms. We will likely do so approximately every month.

Our practice is to itemize all disbursements to allow our clients to know precisely what fees they are paying for legal services alone.

Any fees for outside experts and agents in other jurisdictions will be in addition to our own fees. You may need to pay their invoices directly, rather than as a disbursement within our own invoice.

Retainer Monies to Send

At the beginning of a matter, we ask the client to provide retainer monies for us to apply against future legal fees and disbursements. Generally, as we issue accounts over the course of the case, we ask that the client maintain or return the deposit to its original amount, for us to apply against future accounts. Once we have issued our final account, we will return any remaining retainer monies. Please send us a retainer of US \$5,000.

Instructions and Other Communications

We will accept instructions from anyone at your firm who has apparent authority in this matter, unless you instruct us otherwise.

We encourage our clients to communicate with us about the progress of their files, fees, and other related matters. But the less professional time you use (particularly on needlessly lengthy communications), the more economical your legal bills will be.

Not Representing Related Persons

By representing you, we are not representing persons or entities related to the Receiver.

Documentation Policy upon Termination

When our engagement is complete, you can receive copies of any legal-service documents that we have not previously provided to you (excluding our internal accounting records and any other documents belonging to us). We have the right to retain copies of any documents.

In addition, when our engagement is complete, we will close our file and deal with all documents from your file according to our records-management policy. That policy generally provides that we will destroy documents 12 years after completing our engagement and closing our file. Note that our records-retention policies and practices

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may not be synchronous with yours. If you have any concerns about what documents we retain or dispose of, or when we dispose of them, you must alert us. Absent written agreement otherwise, we are free to retain or destroy the records, as we find appropriate.

Appendix setting out General Terms and Conditions

The appendix to this letter sets out further Terms that will apply to our engagement. Please read them all. Note in particular paragraphs on *Proportional Liability*, and *Professional Liability*, which may limit your rights against us. We encourage you to seek independent legal advice on the Terms.

We are pleased to have this opportunity to work with you. If you have any questions, please call me.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP


Barry R. Crump

BRC/sa
Attachment

The Receiver has received your letter with attached General Terms and Conditions of Engagement and agrees to the Terms in each.

Genovese, Joblove & Battista, P. A.

Per:


Jonathan E Perlman, Esq.
Receiver for TCA and related entities

1-19-21
Date

**Burnet,
Duckworth
& Palmer LLP**
Law Firm

APPENDIX GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

The following terms and conditions apply to our engagement in addition to those set out in the attached letter.

1. Application

In the attached letter and this appendix (collectively, "this agreement"):

- (a) "Burnet, Duckworth & Palmer LLP", "BD&P" and "we", "us", "our" and "ours" mean Burnet, Duckworth & Palmer LLP and its successors and assigns, including any merged firm and any company or entity that is owned (legally or beneficially) by Burnet, Duckworth & Palmer LLP, and
- (b) "Partner" or "Partners" means a partner or partners of Burnet, Duckworth & Palmer LLP.

2. Trust Money

All funds received from our clients are deposited in accounts with banks or other depositories approved by the Law Society of Alberta (the "Law Society"). Such deposits are held in trust for your benefit until they are either disbursed to you (or to someone else as you may direct), or until an account for legal services is rendered. The interest on such accounts is by law paid to the Alberta Law Foundation for general public benefit. If you wish your funds placed in a separate interest bearing account for your benefit at one of the Banks or other depositories where we maintain an account, we will gladly follow your instructions as long as we receive your written instructions in advance. Because we are not investment counsellors or guarantors of the funds and notwithstanding that you may have given us discretion in selecting a Bank, trust company or other depository (in the event that bank, trust company or other depository fails or defaults) we will not be responsible for any loss arising from such failure or default. We will also not be liable for any shortfall, if the funds could have been invested at a higher rate of interest with another institution.

3. Accounts and Disbursements

Our practice is to interim bill quarterly or as close to quarterly as is reasonable in the circumstances of the file. This ensures you are kept aware of the accumulating fees. Payment is due on our accounts when rendered.

Our fees are exclusive of GST, HST or PST and (where applicable) will be charged at the rate that applies to the territory of where the work is being billed (unless government rules determine otherwise) or we are satisfied that the supply of legal services to you is exempt or zero rated.

In acting for you, we are likely to incur out-of-pocket expenses, filing fees and direct overhead costs. Our practice is to itemize all such expenses and direct costs, which we call "disbursements". Disbursements will normally be included in the fee account, and clearly delineated from the fee portion of the account. However, we may render an account for disbursements only when they are substantial, or when disbursements are invoiced to us subsequent to our final billing to you. In the case of substantial disbursements (such as an expert report), we may instruct the person providing the services to bill you directly or we may request you to advance those monies to us to pay on your behalf.

4. Confidentiality and Ownership of Information

We are subject to professional obligations of confidentiality.

Except under compulsion of law or the Rules of the Law Society or any regulatory board, Court or legal authority having jurisdiction over us, we shall keep your affairs confidential.

We do use Information Technology service providers on an outsourcing basis pursuant to which data is or may be available to such service providers, subject to contractual obligations of confidentiality. Such data may be stored or processed in the United States, or accessible from the United States, and therefore potentially available to U.S. authorities under the laws of the United States.

We are often asked to provide general details of our experience and the names of clients for whom we act and we also issue publicity about particular transactions. Unless you choose to instruct us otherwise, we will assume we may release general particulars of your transactions in which we have been involved and we may refer to you as one of our clients.

Contact details (address, phone numbers, e-mail address, etc.) of the individual to whom these General Terms and Conditions are sent along with similar information on key individuals within your organization supplied to us from time to time, may be entered in our client database.

All copyright and other intellectual property rights in the documentation and all original ideas created by us and relating to or connected with the work we undertake for you, will remain our property. Subject to our obligation of confidentiality, we will be free to use any of the documentation created for you to form the basis of other work we do and we will be free to use the intellectual property and original ideas to give advice to other clients.

5. Marketing, Promotional & Educational Communications

You agree and expressly consent that you and all employees and contractors of any of your companies may receive periodic electronic and print marketing, promotional and educational communications from Burnet, Duckworth & Palmer LLP which may include such communications as newsletters, press releases, special educational bulletins as well as invitations to seminars, panel discussions and social events. If you (or your employees or contractors) would rather not receive such communications, individuals may opt out at any time by instructing us accordingly or by using the unsubscribe mechanism found in the electronic marketing, promotional and educational communications.

6. Reliance on Advice

Our advice is given exclusively for the purpose of the matter described in the attached letter (if the relevant matter is so described) (and, as appropriate, exclusively for the purpose of any subsequent matter on which we advise you) and for your benefit. Without our prior written consent, such advice may not be relied on for any other purpose, or disclosed or distributed to any person other than your other advisers (who may not rely on such advice), except as may be required by law.

7. Proportionate Liability

Subject always to the limitation of our liability set out in paragraph 8, where we and/or any of our partners, employees or consultants are finally judicially determined to have contributed to your overall loss and another person (such as a professional adviser) is also liable to you for the same matter, our liability to you shall be reduced to such amount as is judicially determined to be a just and equitable evaluation of the amount of our contribution to your overall loss. In other words, we shall not be responsible for that portion of your loss occasioned by someone else, notwithstanding that the liability of such third parties may have been excluded or limited or that you may not be able to recover from the third party.

BURNET, DUCKWORTH & PALMER LLP**8. Professional Liability**

You agree that (other than in the event of fraud) any claim brought in respect of a matter upon which we are instructed will be made against Burnet, Duckworth & Palmer LLP and not against any Burnet, Duckworth & Palmer LLP Persons.

For the purposes of these General Terms and Conditions, a "Burnet, Duckworth & Palmer LLP Person" is:

- (a) any Partner, employee or agent of Burnet, Duckworth & Palmer LLP; or
- (b) any company controlled by Burnet, Duckworth & Palmer LLP or any officer, employee or agent of any such company; and
- (c) any successor of any of the persons listed in sub-paragraphs (a) and (b) above.

These General Terms and Conditions shall only apply to exclude or limit any liability to the extent permitted by law and (without limitation) nothing in these General Terms and Conditions shall operate to exclude or limit any liability for fraud. In the case of an event of fraud by a Burnet, Duckworth & Palmer LLP Person, a claim may be brought against that Burnet, Duckworth & Palmer LLP Person.

9. Information Technology, Electronic Communication and Internet based Dealrooms and Datarooms

In the course of dealing with your matter, we may communicate with you and others by email unless you notify us that you do not wish us to do so. Some of our Information Technology processes are outsourced in situations where information may be processed or stored in the United States, in which case such information may be subject to the laws of the United States. We may also use Internet based dealrooms or datarooms. There are risks in sending information electronically and in using Internet based dealrooms or datarooms (including but not limited to the security risks of interception, unauthorised access and viruses). We cannot guarantee that all communications and documents will always be received, or that such communications and documents will always be virus free, and we make no warranty with respect to any electronic communications between us. In addition, we make no warranty with respect to the security of any electronic communications between us. You consent to our exchange of electronic communications, including confidential documents, unencrypted.

Accordingly, neither Burnet Duckworth & Palmer LLP nor any Burnet, Duckworth & Palmer LLP Person will be liable for any unauthorised interception, use or disclosure or error, loss, damage or omission arising from or in connection with the electronic communication of information between us or the use of Internet based dealrooms or datarooms or our reliance on information received by email except in the case of our wilful default or dishonesty.

10. Privacy

In the course of acting for you, you may provide to us (and we may collect) personal information that is subject to applicable privacy protection laws. On your behalf, we will collect, use or disclose that personal information for the sole purpose of providing our services to you [all in accordance with our Privacy Policy].

11. Customer Satisfaction

We are confident in our ability to provide a high quality service and will do our utmost to keep you informed of the progress of the matters which we are handling. If there is any aspect of our service with which you are not entirely satisfied, please contact the lawyer in charge of the matter or, if you prefer, our managing partner.

We will try to resolve any difficulty or disagreement as quickly as possible. In the unlikely event we are unable to resolve any issues

between us, the Law Society provides a complaints and redress scheme, details of which will be supplied to you upon request.

12. Termination

You may terminate our services at any time by giving notice to us in writing.

Subject to general standards of the professional responsibility of the legal profession, we may give written notice to you at any time of our intention to cease to act as your lawyer.

- (a) immediately, if it becomes required or advisable by law or by our professional ethics for us to cease acting for you;
- (b) if any of our invoices are not paid within ¹⁰ days of being rendered or we consider that payment of our fees and disbursements may be at risk. *court appeal*
- (c) if you fail to provide us with instructions within a reasonable period of being asked for them; or
- (d) if we decide it is necessary for any other reason, in which case we will provide you reasonable notice. *alch* *DEP* *BLC*

Following termination of this agreement (for whatever reason) you will remain responsible to discharge our fees and disbursements incurred by us up to the date of termination, together with GST, HST or PST (where applicable). The provisions of this agreement relating to confidentiality and ownership of information (paragraph 4), marketing, promotional & educational communications (paragraph 5), reliance on advice (paragraph 6), proportionate liability (paragraph 7) and professional liability (paragraph 8), shall continue to apply.

13. Severability

Any provision of this agreement which is or becomes prohibited or unenforceable does not invalidate, affect or impair the remaining provisions hereof.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER'S MOTION TO APPROVE
RETENTION OF CANADIAN COUNSEL**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as Court-Appointed Receiver's ("Receiver") Motion to Approve Retention of Canadian Counsel ("Motion") [ECF No. __]. The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to engage the services of the specified professional services entities described in the Motion at the stated hourly rates and terms in the proposed engagement letter.

DONE AND ORDERED, in chambers at Miami, Florida, this __ day of January, 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA